

LIEVANO'S DEPOSITION

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
SANTOS HERNANDEZ, EMANUEL DE JESUS LIEVANO
and MIGUEL ANTONIO VASQUEZ,

Plaintiffs,

-against-

ROSSO UPTOWN LTD., MICHAEL TIZZANO and
MASSIMO GAMMELLA,

Defendants.
-----X

Via Zoom
WEDNESDAY, AUGUST 10, 2022
10:23 a.m.

VIDEOCONFERENCE DEPOSITION of EMANUEL DE JESUS
LIEVANO, the Plaintiff herein, taken by the Defendant,
held before Colleen Bjornholm, a Court Reporter and
Notary Public of the State of New York.

* * *

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WITNESSES: JAMES L. HARRIS, JR. & JAMES L. HARRIS, JR.

James L. Harris, Jr.

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1 APPEARANCES:
(Via Zoom)

2 MOSER LAW FIRM, P.C.
3 Attorney for Plaintiff
4 5 E. Main Street
Huntington, NY 11743
(516) 671-1150

5 BY: STEVEN MOSER, ESQ.
6

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8 MASSIMO GAMMELLA, Pro Se
9

10 ALSO PRESENT:
11 MILADY MONTENEGRO, Spanish Interpreter
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1 E. LIEVANO

2 MILADY MONTENEGRO, Interpreter, was duly sworn
3 to translate from English to Spanish and Spanish to
4 English.

5 THE INTERPRETER: I do.

6 EMANUEL DE JESUS LIEVANO, after having first
7 been duly sworn by a Notary Public of the State of New
8 York through the Interpreter, was examined and testified
9 as follows:

10 THE WITNESS: Yes.

11 - - -

12 EXAMINATION

13 - - -

14 BY MR. GAMMELLA:

15 Q. I'm just going to ask some questions, and I
16 guess just going to translate for him, and I'm going to
17 take it from there. My name is Massimo Gammella, and
18 I'll be representing myself. That's for the court for
19 sake. Okay.

20 The first question is what is your full name?

21 A. Emanuel de Jesus.

22 THE INTERPRETER: I think you're going to need
23 the spelling. Lievano Rivera.

24 Q. Do you go by any other names?

25 A. No.

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2 Q. What is your legal status?

3 MR. MOSER: Objection. Don't answer that
4 question.

5 BY MR. GAMMELLA:

6 Q. Do you have (inaudible) residency while
7 employed by Rosso Uptown?

8 MR. MOSER: Objection. Don't answer that
9 question.

10 BY MR. GAMMELLA:

11 Q. What is the meaning of minimum wage?

12 A. Minimum wage means that you have to be paid
13 the minimum wage by the government.

14 Q. Tell me what's the current minimum wage now?

15 A. Fifteen dollars an hour.

16 Q. The same when you worked at Rosso Uptown?

17 A. No.

18 Q. Can you tell me what working overtime means?

19 A. That you would be paid a little bit more than
20 the minimum per hour.

21 Q. What is the rate of overtime now? Do you
22 know?

23 A. I'm not too aware of it.

24 Q. A tax return?

25 MR. MOSER: Objection. Don't answer that

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2 question.

3 BY MR. GAMMELLA:

4 Q. How did you know that Rosso Uptown was looking
5 to hire?

6 A. I found out from some acquaintances in the
7 area near the restaurant.

8 Q. How did you get hired by Rosso Uptown?

9 A. It was through Michael.

10 Q. Who hired you? It was Michael I guess?

11 A. Michael, and I spoke with him as well when I
12 was hired.

13 Q. While you were employed at Rosso Uptown, did
14 you work anywhere else?

15 A. No, only there.

16 Q. You never held another job while you worked at
17 Rosso Uptown?

18 A. No.

19 Q. When did Rosso Uptown open for the first time?
20 Do you remember?

21 A. No.

22 Q. Can you describe the job of what did you do at
23 Rosso Uptown?

24 A. Salads and I used to cook.

25 Q. What was your weekly salary while working at

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2 Rosso Uptown?

3 A. In 2016, it was 460.

4 Q. How did you come up with that number?

5 A. I still remember it.

6 Q. How were you getting paid?

7 A. Cash.

8 Q. How long had you been employed at Rosso

9 Uptown? How long have you been a Rosso Uptown employee?

10 A. Since August of 2016 through August 2018.

11 Q. So you were getting paid 460 weekly for 52
12 weeks?

13 A. No, because later on it was increased around
14 2018, the beginning of 2018, to 530.

15 MR. GAMMELLA: So we can ask the questions.

16 We cannot request tax return or anything like that, Mr.
17 Moser, correct?

18 MR. MOSER: If we have to.

19 MR. GAMMELLA: To see further.

20 MR. MOSER: I can't give you legal advice.

21 MR. GAMMELLA: Can I ask you a question?

22 MR. MOSER: My opinion as an attorney is that
23 it's not relevant.

24 MR. GAMMELLA: It's not relevant. Okay. But
25 can we request tax returns from your client?

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2 MR. MOSER: You can request. I would probably
3 object to that, but you'd be more than happy to, you
4 know.

5 MR. GAMMELLA: That was one of the questions.
6 That's okay. I'll move on.

7 BY MR. GAMMELLA:

8 Q. Do you remember who worked there?

9 THE INTERPRETER: I'm sorry. Can you repeat?

10 BY MR. GAMMELLA:

11 Q. Do you remember who worked there?

12 A. Yes.

13 Q. At the time you said you were employed by
14 Rosso Uptown, where did you live?

15 A. I lived in Huntington and later on in 2017 I
16 moved to Mineola.

17 Q. At the time you say you were employed by Rosso
18 Uptown how did you get to work?

19 A. By bus.

20 Q. Were you always on time?

21 A. Sometimes I will be over 10 minutes.

22 Q. What time more or less you arrived at Rosso
23 Uptown?

24 A. 10:30 always.

25 Q. Did you have a key to open the front door?

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2 A. No.

3 Q. Who usually would open the door in the
4 morning?

5 A. The pizza maker would open it.

6 Q. Was a man called Renato there?

7 A. Renato, yes.

8 Q. Do you know the hours, or do you remember the
9 hours of operation at Rosso Uptown?

10 A. Yes.

11 Q. Which one you thin it was? Or who was?

12 A. Sixty-five hours per week.

13 Q. What was the operation hours for Rosso Uptown
14 from 10 to whatever. That's not the question of how
15 many hours he worked, that he thinks he worked.

16 A. Okay, from 10:30 in the morning until 10 at
17 night. Okay, Monday through Thursday I was working from
18 10:30 in the morning until 10 at night. Friday and
19 Saturday I used to work from 10:30 to 11 p.m.

20 Q. That was always the same?

21 A. Yes, and Sunday from 11 to 10 p.m. I was off
22 on Tuesday.

23 Q. Until approximately you worked at Rosso
24 Uptown, when was the last day there?

25 A. No, I can't remember that.

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2 Q. At least the year? The year that you worked
3 there?

4 A. Yes, 2018.

5 Q. Were the same people working there from when
6 you started until you left?

7 A. Yes.

8 Q. You always worked at Rosso Uptown?

9 THE INTERPRETER: Did you always work at Rosso
10 Uptown is the question?

11 MR. GAMMELLA: Yes, did he always work there.

12 THE WITNESS: Yes, always, since I started in
13 2016 through 2018.

14 BY MR. GAMMELLA:

15 Q. Is this -- I don't know if this is a very good
16 question, is this the only lawsuit on labor lawsuit that
17 you have, or you are involved with?

18 A. This is the only one.

19 Q. Okay, now let me do these questions. You're
20 saying that you worked approximately two years at Rosso
21 Uptown?

22 A. Yes.

23 Q. So when you worked those two years at Rosso
24 Uptown, and you're now declaring in this lawsuit that we
25 owe you lost wages and whatnot.

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2 Why not saying to us, to me, the first week,
3 few weeks, a month, two months? Why waiting, you know,
4 years after the place was closed for this to come up?

5 MR. MOSER: Are you asking him why he didn't
6 sue you when he was working there?

7 BY MR. GAMMELLA:

8 Q. No. I'm asking why wouldn't he tell us if his
9 wages weren't correct or we didn't pay him enough or --
10 I couldn't -- I didn't think at the time he knew he was
11 going to sue us. It's four years ago.

12 That's what I'm saying. I'm saying at the
13 time if he thought it was not correct what we were
14 paying, why wouldn't he tell us?

15 A. Well, I don't know. Well, he told me that I'm
16 going to pay it to you in cash, and I didn't have a lot
17 of knowledge.

18 Q. How did you end up meeting or retaining Mr.
19 Moser as representing your case in this case?

20 A. It was Antonio. When Antonio was fired,
21 Antonio went to him, and they were given my information
22 and they contacted me.

23 Q. Do you remember the first time when you went
24 to see him, Mr. Moser?

25 A. This is the first time.

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2 Q. So this is the first time. The question was
3 what was (inaudible) with you. I guess this is the
4 first time so there's no sense. Well, now I know but do
5 you know if Mr. Moser speaks Spanish. I know my answer,
6 but go ahead.

7 A. I know because I spoke to him now, but I
8 didn't know, I had not spoken to him.

9 Q. There's two other individual's names on the
10 complaint.

11 Do you know them?

12 THE INTERPRETER: I'm sorry. Go ahead.

13 BY MR. GAMMELLA:

14 Q. I'm saying there was two more individuals on
15 the lawsuit.

16 Do you know them?

17 A. I do know Antonio. He used to work as a
18 dishwasher. Miguel, who used to work in the kitchen.

19 Q. You named them. Okay, so it was Antonio and
20 Miguel. Okay. Miguel according to him when he signed
21 some papers, he decided to drop the case. Do you know
22 who is that person that dropped the case, this Miguel?

23 Do you know him personally?

24 A. Yes.

25 Q. Do you remember going to Pepe Rosso where I

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2 work a few months ago?

3 A. What was the reason of the visit there?

4 Q. I went with a girlfriend because we wanted to
5 have wings, so we went by, but at the time I didn't know
6 what was going on. It was later on when they reached
7 out to me with some papers and Antonio told me that
8 there was a lawsuit and that you're part of it.

9 Q. Is that true that you swear to me that you had
10 no idea of the lawsuit, and you were not suing us at all
11 when I asked you because you were there at my workplace
12 and I told you it was not appropriate for you to be
13 there as you're suing me. And you told me that you had
14 no idea. That's when I showed you, we showed the piece
15 of paper showing you that you were actually suing us,
16 and you told me you had no idea.

17 A. Yes because Antonio who gave my information
18 and said, okay, so they called me. But they also didn't
19 pay overtime and the law now -- well, if this continues,
20 the lawsuit is already in progress.

21 MR. GAMMELLA: I don't know if this is
22 possible, but I would like to submit a recording done in
23 my workplace from the camera we have there. There is a
24 recording. So I don't know how to go about this if I
25 have to submit this or you are able to submit this

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2 somehow. It's an evidence, a recording about what we
3 were talking about, where we showed them, and they swear
4 they had no idea and that was the first time he ever
5 heard it and whatever he said. That is correct.
6 Process approve. Is she there?

7 THE INTERPRETER: Miss Court Reporter?

8 THE COURT REPORTER: Yes, I'm here.

9 MR. GAMMELLA: It is possible, is that up to
10 you for me to submit this piece of evidence as exhibit
11 of the recording of what we were talking about, that we
12 were -- this is a camera recording. We have security
13 there, and this was recorded at the time. We had no
14 idea that he was going to be there obviously, as he
15 said, and he spoke the truth. So I just want to make
16 sure that the judge or somebody gets this, that we are
17 saying the truth.

18 - - -

19 (Whereupon, Defendant's Exhibit A was marked
20 for identification.)

21 - - -

22 THE COURT REPORTER: Okay. You can email me
23 the audio if that's possible.

24 MR. GAMMELLA: Yes.

25 MR. MOSER: I have not been provided with a

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2 copy of this recording, and I would request that I be
3 provided a copy of this recording like immediately.

4 MR. GAMMELLA: Okay. I will send it. I will
5 email it to both. However, actually I made a smaller
6 version on email that will fit because it's a long
7 recording.

8 MR. MOSER: Again, I would -- do you have a
9 copy of that?

10 MR. GAMMELLA: The email is the same type as
11 this, same length. It's another recording. It's the
12 same length as -- this is on the thumb drive. If you
13 want it, you can, actually you can -- you can transfer
14 that on your computer. This way there's no
15 misunderstanding. Here. It's a thumb drive. You can
16 do it after if you want (inaudible) and email it to
17 Santos. It's the exact same thing. It's just, you
18 know, compressed. It's right here so we can make a copy
19 and I will email. I have your email somehow or --

20 THE INTERPRETER: In there.

21 MR. GAMMELLA: It's in there, yeah I can't but
22 you have it. Okay. All right, very well. That's all.
23 That's pretty much it other than that.

24 MR. MOSER: Thank you.

25 THE COURT REPORTER: I'm sorry. Mr. Gammella?

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2 MR. GAMMELLA: Yes.

3 THE COURT REPORTER: Do you want a copy of the
4 transcript?

5 MR. GAMMELLA: Yes if you could email it to
6 me.

7 THE COURT REPORTER: Okay. If you could put
8 your email in the chat, that would be great.

9 MR. GAMMELLA: You can email me anything, and
10 then I will respond to you, okay?

11 - - -

12 (Whereupon, the Witness was excused.)

13 - - -

14 (Time noted: 10:50 a.m.)

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EMANUEL DE JESUS LIEVANO

Signed and subscribed to
before me, this _____ day
of _____ 2022.

Notary Public

1	I N D E X O F W I T N E S S	
2	EXAMINATION BY	PAGE
3	MR. GAMMELLA.....	03

5	I N D E X O F E X H I B I T S		
6	NO.	DESCRIPTION	PAGE
7	DEFENDANT A	Recording (retained).....	13

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C E R T I F I C A T E

I, COLLEEN BJORNHOM, a Notary Public within
And for the State of New York, do hereby certify:

THAT EMANUEL DE JESUS LIEVANO, the witness
whose deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true record of
the testimony given by such witness.

I further certify that I am not related to any
of the parties to this action by blood or marriages; and
that I am in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 10th day of August 2022.

COLLEEN BJORNHOLM
COLLEEN BJORNHOLM

1	LAWYER'S NOTES		
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